Supreme Court, U.S.
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Docket No. 09-843 OCT 14 2009

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THE SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA, et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is there a time limit as to how long judges in courts may deliberately refuse to allow parties to proceed with their case without denying the litigants blocked by the stalling access to the courts in violation of their fundamental constitutional rights?
2. Is that time exceeded at 10, 20 or 23 years, just when?
3. Was that time limit exceeded here?
4. May judges of a court, in order to avoid embarrassing a fellow judge for a questionable decision should it receive scrutiny, simply sit on the claims and defenses of litigants for years, refusing to act upon them at all and then when that original judge retires, "encourage": those litigants to go away and, when they refuse, simply keep on denying them any action on their claims and defenses and do so without denying them their fundamental right of access to the courts?
5. Must access to the courts and to justice be adequate, effective and meaningful or may it just be a pretense?
6. Does such concerted inaction by judges deprive litigants of their right to trial by jury?
7. Do we have a Rule of Law or of men and women, men and women protecting each other when judges simply refuse to act for year after year and other judges refuse to do anything to correct the inaction?

8. Is a refusal by judges to act year after year an "act or omission" taken in their judicial capacity as to immunize them from suit?

9. Is such a refusal to act an act or omission that is "taken" within their judicial capacity in so as to immunize them from liability of any sort under 42 U.S.C.§ 1983 or from fees and expenses under 42 U.S.C.§ 1988?

10. What about declaratory relief in such a situation?

11. What about prospective injunctive relief in such a situation; what about monetary damages; what about counsel fees and expenses under 42 U.S.C. § 1983 and § 1988?

12. Where one judge of a municipal court declares a decree may another judge of the same court then ignore and contravene and violate that declaratory decree and not become liable under 42 U.S.C. § 1983?

13. In such a situation does not "declaratory relief" become unavailable within the meaning and intendment of the Ku Klux Klan Act, when it is sought and the requests are ignored for years so that liability under 42 U.S.C. §1983 is created?

14. Does not the language in 42 U.S.C. § 1983 that "For the purposes of this section, any Act of Congress exclusively applicable to the District of Columbia shall be considered to be a statute of the District of Columbia" mean what it says and thus effectively override the decision of this Court in *Blackmar v. Guerre*, 342 U.S. 512 , 514-515 (1952) or does that

decision somehow override a specific Congressional enactment that was meant to override it as held here by the United States Court of Appeals?

15. May a U.S. Court of Appeals base an opinion squarely upon an opinion by a U. S. District Judge so as to be clearly mistaken in that the opinion it relies upon does not even deal with the point it purports to be making but an entirely different set of points not at issue and then refuse to correct such an obvious mistake without abusing its discretion?

16. May the above things be done without depriving the petitioners of their right of due process inasmuch as process of any sort is completely denied so that justice denied is justice denied ?

17. Were the following decisions of this Court contradicted or ignored by the United States Court of Appeals so as to violate the fundamental rights of the Petitioners:

a. *Boddie v. Connecticutt*, 401 U.S. 371 (1971)?

b. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)

c. *Armstrong v. Manza*, 380 U.S. 545 (1965)

d. *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

e. *Brillhart v. Excess Ins. Co. of America*, 36 U.S. 491 (1942)

f. *Moses H. Cone Memorial Hospital v. Mercury Const. Corp.*, 460 U.S. 1 (1983)

18. May a court system deny access and justice to a Vietnamese set upon by other Vietnamese when he files counter and third-party claims against another Vietnamese who has baselessly sued him in violation of a settlement agreement and who heads up a would-be ethnic mafia which the subject Vietnamese, aided by two non-Vietnamese Americans takes a stand against when a judge initially incorrectly and erroneously acts as a prosecutor for the would be mafia in an embarrassing way on the theory that all Vietnamese are liars and not deserving of the processes of the judicial system and do so without violating the civil rights laws? May, in other words, courts grant injustice to an ethnic and racial minority group member and then refuse justice to the ethnic and racial group member injured by that injustice and those assisting them when they seek it through defenses, and counter and third-party claims?

PARTIES

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The DISTRICT OF COLUMBIA
COURT OF APPEALS
500 Indiana Avenue, NW
Washington, D. C 20001

THE PANEL OF JUDGES
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS in their
official capacity as setters of case
management policy in their decisions
en banc and as three judge panels

THE BOARD OF JUDGES OF
THE DISTRICT OF COLUMBIA
500 Indiana Avenue, NW
Washington, D. C. 20001

ERIC T. WASHINGTON, Chief Judge,
District of Columbia Court of Appeals,
in his official capacity as
setter of judicial policy and practice
for the District of Columbia
Court of Appeals,
500 Indiana Avenue, NW
Washington, D. C 20001

and

HERBERT B. DIXON, JR.
Judge, Superior Court
of the District of Columbia,
in his official capacity as judge to whom
the case at issue is presently assigned,
500 Indiana Avenue, NW
Washington, D. C 20001

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CITATION STATEMENT

(d) This case was unreported in the United States Court of Appeals for the District of Columbia Circuit by specific direction and so far as petitioners are aware is otherwise unreported and there are no citations.

JURISDICTIONAL STATEMENT

(e) The basis for jurisdiction in this court:

(i) Date of judgment: May 1, 2009

(ii) Date of denial of reconsideration: July 16, 2009

(iv) Petitioners believe that this Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

(f) The constitutional provisions at issue include the Article IV Privileges and Immunities Clause, the First Amendment Right to Petition Clause, the Fifth Amendment Due Process Clause, the Seventh Amendment Right to a Trial by Jury Clause and the Fourteenth Amendment Equal Protection and Due Process Clauses. The statutes involved include the Ku Klux Klan Act, 42 U.S.C. § 1983, the Civil Rights statute 42 U.S.C. § 1985 and also 42 U.S.C. § 1988. The provisions and statutes are set out in the Appendix.

STATEMENT OF THE CASE

The plaintiff and petitioner Hoai owned a Sunoco service station franchise on Pennsylvania Avenue SE in Washington, DC. A group of would be-mafia fellow Vietnamese, in the guise of lending him money to help him acquire and start the franchise (a purported loan that turned out never to exist) took over the station by threats of physical violence against him and his family. See complaint starting at ¶¶ 25-32 Urged by Sunoco to take back his franchise or lose it he enlisted the help of the Hemenways, father and son, the other plaintiffs/petitioners in this case. The three of them drew up a formal notice to quit the premises and had it endorsed by the Sunoco area representative certifying that he, Hoai, was the franchisee. Hoai and the Hemenways entered the station and showed their notice. All of the Vietnamese who were there left, peacefully, as established by the presence of the police, who had come.

At the time the leader of the would-be Vietnamese mafia, one Thanh Van Vo (Vo), was not there. It turned out that he was in Toronto, Canada on unknown business. After the Vietnamese who were in the station under Vo left, the present plaintiffs Hoai and David Hemenway stayed in the station the rest of that day and overnight. The next morning Vo came into the station with a gang of Vietnamese, some brandishing weapons, and a knife. Hoai and David Hemenway locked themselves in the

small station building and called 911. Vietnamese besiegers were trying to break through the roof and the rear of the building. The police arrived and also John Hemenway, David's father. A lawyer for Vo, Michael Arif, also came. After a confrontation and conversation, the parties agreed that they would meet at the station again the next day in the presence of the Sunoco Area Representative, one Ernie Peele. First Am. Compl. ¶¶ 43-62.

The following day the parties met at the station in the presence of Ernie Peele, who announced that Hoai was Sunoco's franchisee. Instead of abiding by the agreement to go by the word of Peele, as agreed, Vo's lawyer stayed behind briefly, purportedly to take inventory, while Vo, without revealing his plans, went to a law firm, Jones, Day, Reavis and Pogue, and gave them money from the station's proceeds as a retainer and had them draw up a complaint against the plaintiffs consisting of trumped up charges and sued the three plaintiffs in this case in the Superior Court along with Sunoco also as a co-defendant with the three present plaintiffs, Hoai and the two Hemenways. Vo as the plaintiff in that case sought and obtained a TRO based on a tort of "wrongful eviction" that he had not pled. It was inserted into the hearing by the Superior Court judge, whose private practice before going on the bench, had focused on that tort. First Am. Compl. ¶¶ 56-98.

While the TRO was in effect, Sunoco switched sides and gave the station to Vo in what would later

be found in the United States District Court on summary judgment to be an illegal termination under the PMPA. Hoai and the Hemenways counter-sued Vo in the Superior Court of the District of Columbia and sued Sunoco and Vo's colleagues in his would-be Vietnamese ethnic Mafia as third-party defendants. These claims included federal claims of civil rights violations under 42 U.S.C. § 1983, which were taken to federal court after being split out at pursuant to a declaration (2 actually) by a Superior Court judge where they were ultimately found to not have merit because no state actors or state actions were alleged (See *Hoai v. Vo*, 935 F.2d 308 (D.C.Cir.1991) (The present defendants had not at that point made clear their determination to deny us any access to their justice system.) and also a federal claim against Sunoco as having violated the PMPA with an illegal termination. The PMPA claim was also split out pursuant to declarations (2) by a Superior Court judge and taken to federal court where a victory against Sun by the undersigned Thanh Vong Hoai resulted. See *Hoai v. Sun Refining and Marketing Company, Inc.*, 866 F.2d 1515, 1519-20 (D.C.Cir.1989) where this Court took notice of one of the declarations by the Superior Court judge of which we speak. No actions have been allowed on the non-federal counter and third party claims for over 23 years. First Am. Compl. ¶¶ 101-148

Thanh Van Vo, filed over 23 years ago. No hearing on these counterclaims has ever been held by any of the defendants herein and plaintiffs' attempts

at discovery into them were blocked repeatedly. During that time there have been numerous motions filed requesting that the Superior Court declare the claims of Vo against the plaintiffs herein invalid, stay the case because of the breach of the settlement agreement to abide by the word of Ernie Peele and so forth. There was a motion with extensive attachments showing that the plaintiff against the undersigned in the Superior Court, Thanh Van Vo, had agreed to settle matters between himself and the plaintiff and petitioner herein, Thanh Vong Hoai, in August of 1986 at the gas station in question and brought suit against all three of the undersigned in violation of that agreement immediately thereafter in violation of that settlement agreement. That motion was filed on August 25, 1989 and was never answered. No action has been taken on it to this day, over 20 years later, although if granted it would have ended the claims against the three of us and cleared the way for our counter and third-party claims if the defendants had not been determined to prevent us from any meaningful access to their justice system.

The recorded testimony of the breached settlement agreement to abide by the word of the late Ernie Peele, then the Sun Area Representative, is on record in the Superior Court proceedings. No declaratory relief has even been granted and all motions and requests except for one by have never even been mentioned although those by the undersigned were fully briefed years ago. And, with regard to that one, a Rule 12(b)(6) dismissal motion

filed while the case was removed to federal court, the judge refused to examine it and merely put it off saying it would be deferred to allow for discovery which discovery was in fact not allowed to plaintiffs, even despite an order at one point to compel the deposition of the Superior Court plaintiff against us, Than Van Vo. First Amend. Compl. ¶¶ 154-162 and 203-246

Twice, at hearings, a Superior Court judge suggested to the present petitioners, Hoai and the Hemenways, that they should split their claims into local and federal claims and try the latter separately in the federal court while the local claims were stayed in the Superior Court to be litigated upon completion of the split-out proceedings in the federal court as "what was left" once federal court proceedings were over. First Amend. Compl. ¶¶ 163-171.

Hoai and the Hemenways followed this suggestion and split their claims into local and federal claims and tried their federal claims in the federal court. The three of them lost their civil rights claim because, as stated, there were no state actor defendants and no state action or color thereof. Hoai won his PMPA case against Sunoco in the federal court below. Upon the completion of those matters the parties re-opened those matters in the Superior Court but have not been able to get any action upon their claims for what is now over 23 years total. In the meantime Vo, the plaintiff in the Superior Court

disappeared, reappeared, and now has disappeared again. A third party defendant, Minh, reportedly returned to Vietnam and tried to deal with the government there, and was beheaded and cut up for his pains. A comprehensive motion to dismiss the Superior Court case against us brought by Thanh Van Vo in 1986, which we filed upon our finishing matters in federal court pursuant to the declarations of the Superior Court judge has never even been looked at. It was fully briefed and has never been ruled upon now for over eleven years, having been filed by us May 2, 1998. First Amend. Compl. ¶¶ 202-232

The only action has been that upon the plaintiffs returning to the Superior Court and reopening matters there, a Superior Court judge, who was a friend of Sunoco's counsel, dismissed Sunoco as a third-party defendant upon Sunoco's motion to dismiss those claims because the plaintiffs had split their claims just as they had been asked to do by a Superior court judge. This was granted initially without allowing the plaintiffs time to reply to that motion and the Superior Court judge, Dixon, a defendant herein, refused to ever acknowledge that the plaintiffs had been asked to split their claims by his own court and thus had been "mousetrapped." First Amned. Compl. ¶¶ 218-226.

There matters remain, with even an intervening request for a status conference unacted upon. At one point the defendant judge Dixon did

call the plaintiffs into his chambers and asked the plaintiffs to go away but they declined to do so. First Amend. Compl. ¶¶ 227-234

Thus the plaintiffs/petitioners, after years of such inaction, brought suit in the court below for violation of their civil rights and the denial of access to any resolution by the municipal courts of the District of Columbia by the courts, the judges involved, and the panels of judges that administer the local courts.

In the United States District Court none of the arguments and contentions of the plaintiffs/ petitioners were taken seriously or treated with any analysis. Instead the judge assumed that plaintiffs/petitioners were asking him to overturn decisions by the defendant judges of the municipal courts although no such request was ever made. Judge Leon did not specify any such decision nor could he have. For no defense or claim of the plaintiffs/petitioners was ever ruled upon in the municipal court and has not been rule upon to this day.

Judge Leon in the United States District Court also relied upon the decision of this Court in *Blackmar v. Guerre*, 342 U.S. 512, 514-15 (1952) to hold that he would dismiss our claim because we had sued in the wrong name. In doing so he ignored the fact that Congress had amended 42 U.S.C. § 1983 after that decision to specifically repudiate its

holding about District of Columbia agencies being sued by their name and also ignored our right to amend to correct such errors. The Court of Appeals engaged in precisely similar behavior, even to ignoring the 1970 amendment to the Ku Klux Klan Act and its clear language. The only thing that the Court of Appeals did differently was to, during an early interlocutory appeal on a denial of injunctive relief, to completely and mistakenly rely upon the wrong decision below in making its decision and then refuse to correct its clear mistake. In its decision of January 11, 2006, during this interlocutory appeal, the panel based its decision that no federal court has ruled as argued by us on a decision by Judge Oberdorfer in the Hoai PMPA case which it cited as *Hoai v. Sun Refining and Marketing Co., Inc.*, 1990 U.S. Dist. LEXIS 13015 (D.D.C.Oct.1, 1990). In fact that decision had nothing to do with and did not discuss that issue and in fact was a summary judgment victory for us that cannot have conceivably been the basis for the decision which the appellate panel was basing upon it.

Thus, simply put the case is one where the municipal courts have denied us any meaningful, effective and adequate access by doing nothing on any of our defenses and claims for what is now over 23 years and the federal judges to whom we turned to do something about this deprivation of our basic rights decided that they would prefer to protect their fellow judges rather than apply the Rule of Law and enforce or, for that matter, even seriously examine

our fundamental rights under the Constitution upon which our Rule of Law is based.

The basis for the jurisdiction of the District Court was that we brought out suit there for federal questions, consisting of violations of our rights of access to the courts, due process and trial by jury and for violation of our federal rights under 42 U.S.C. §§ 1983, 1981 and 1988.

ARGUMENT

It does not appear that this Court has ever considered the issue or situation where members of municipal court system, judges and administrators, have just decided that they will simply refuse parties sued within their system to be able to have any decisions made on their defenses, their counter-claims or their third-party claims as filed when they have been sued in that court system. This refusal to grant any process of the courts to go forward has now gone on for over 23 years and it appears will continue for years to come, perhaps in the hopes that we either die or give up on insisting on our fundamental right of access to the courts. It does not appear that this Court has ever considered a case where parties were taken into courts against their will, and, even, in this case, against a settlement agreement that we would not be sued, and then when those parties sought to defend themselves and to counter and third-party sue, the judges and personnel of the court and its appellate court and the officials in charge of it

decided that they would cooperate to see that no defense raised would ever be considered and no counter and third-party claims that we made would ever be considered. This treatment was aggravated in this instance because it was intended to assure that a judge who made an inept and incompetent decision on a TRO at the outset of the case, a decision in which she went outside of the pleadings in the case and decided to act as a prosecutor, a prosecutor, as it turned out, for the extortionate activities of a would-be ethnic mafia—in this case Vietnamese.

Furthermore, the United States Court of Appeals for the District of Columbia Circuit, from which this case arises, has held that the right of access to the courts under the Constitution must be "adequate, effective and meaningful." *Harbury v. Deutch*, 233 F.3d 596, 607 (D.C.Cir.2000) (*Harbury I*). This Court took up the *Harbury I* case in *Christopher v. Harbury*, 536 U.S. 403 (*"Harbury III"*). But this Court did not address the issue of whether or not access to the courts should be adequate, effective and meaningful. In that case it reversed on other grounds without addressing that issue. This is an important case raising that issue emphatically. Nothing could be more a denial of adequacy, effectiveness and meaningfulness of access to a court system than, when people are sued in it and they defend and counter and third-party claim, the court system into which they have been involuntarily drawn simply refuses to take any action to allow them to have their defenses heard,

their counter claims heard, or their third-party claims heard.

It is time, we would suggest, for this Court to address this issue for the first time. Here the abuse of fundamental rights was aggravated when, after years of such inaction the judge whose inept decision in which she stepped outside of her judicial role and acted as a prosecutor—for the would-be oppressors—we were summoned into the chambers of the judge then in charge of the case and the attempt was made to persuade us to just go away rather than insisting that the courts operate for us to have our defenses and claims heard. This treatment that we received is fundamentally at odds with the root cases of this Court on the right of access to the courts such as *Chambers v. Baltimore & Ohio R.R.Co.*, 297 U.S. 142 (1907).

How can we have been given "due process" if we are allowed no process at all? In *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971) this Court said:

> American society ...bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common law model. It is to courts ... that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original

> Constitution, in the Fifth Amendment ... recognized the centrality of the concept of due process in the operation of the system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. It is upon this premise that this Court has through years of adjudication put flesh upon the due process principle. 401 U.S. at 375

The facts here, in direct contradiction to the above passage, move away from the common law model into the direction of "strategically placed individuals," namely, judges. If this case stands without being taken up by this Court it will directly contradict *Boddie* and establish a dangerous precedent in a very important court of appeals and district court that the refusal to grant any process at all to litigants is somehow their due process. This thus needs to be addressed as a matter of first impression lest there be no functioning at all of what is supposed to be our society's primary "social enforcement mechanism."

If more than 23 years of depriving litigants of any process is not a violation of their rights to due process, than how many years does it take? 24, 25, 35, 45, 50? It would seem that a year or two should be the outer limit if the term due process is not to be robbed of its meaning. In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-29, (1982) this Court held that there are "constitutional limitations" upon the refusal of courts to give a litigant meaningful opportunity and that causes of action are a species of property. That causes of action are a species of property was also found in *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The events that have been allowed to stand uncorrected here that occurred in the municipal courts of the District of Columbia, or perhaps, more accurately the failure to allow the required events that due process entails to take place, stand in direct contradiction to both of those decisions by this Court and for that reason this petition should be granted as an important case of first impression to make sure that other municipal court systems understand fully that this kind of deprivation of due process by depriving of any meaningful process will not be allowed to stand within a constitutionally based justice system.

Further, as also pointed out in *Boddie, supra*, the opportunity to which we are entitled as part of due process is an opportunity not only "to be heard" as opposed to not being heard, but it is a right to have a "meaningful opportunity to be heard." 401 U.S. at 377. What went on here is also in conflict

with the decision of this Court in *Armstrong, supra* 380 U.S. at 552 where it was held that the opportunity to be heard must be "at a meaningful time and in a meaningful manner." It does not appear that there is a reported case in which the denial of that requirement has been quite so flagrant in the sense of not kicking the litigants out of court or denying them outright access to the courts but rather of having the litigants to be hauled into court by someone else and then letting them languish there with no chance to have any of their defenses, counter or third-party claims being heard. This is thus an important case of first impression in addition to being one of conflicts with the decisions of this Court.

In that same regard it is an important case of first impression with regard to the question of deprivation of the Seventh Amendment right of trial by jury as at common law. There are many cases in which persons were tried without a jury when they were entitled to one that this Court has decided. There are many cases in which this Court has decided that individuals were deprived of property or liberty without their being granted their right to a trial by jury such as by administrative or executive act but there do not appear to by cases where individuals were taken into a court system and then simply allowed to languish there without any activity on their defenses and claims being allowed. This needs to be addressed.

Even more important we would submit, in order to preserve the appearance of a Rule of Law based upon our Constitution is for this Court in the face of the absolutely refusal of the federal judges below to do anything about this deprivation of due process and fundamental constitutional rights, to make it clear that a refusal to properly analyze and study such behavior within a municipal court system to take up the issue and clarify that federal judges cannot shun taking action to preserve these fundamental rights when they are taken away in this fashion.

To begin with there are the classic decisions of this Court on abstention and comity. It is always a proviso in a case such as *Moses H. Cone Memorial Hospital v. Mercury Const. Corp.*, 460 U.S. 1 (1983) that there should be an analysis of whether there is in fact a meaningful remedy within the state or local judicial system at issue, whether the system allows for the issue that the litigants seek to have the federal courts address to be addressed. Obviously, to completely refuse to allow the litigants here to proceed with their defenses and claims at all for years and years indicates that there is no such opportunity within the District of Columbia municipal court system as operated by the respondents in this case for the issues of fundamental deprivation of our constitutional and federal statutory rights to be addressed. Thus there is a conflict here with the decision in *Moses H. Cone Memorial Hospital.*

In *Moses H. Cone, supra*, also this Court found that courts have "an obligation to decide cases." 460 U.S. at 14. Here we were forced into the defendant District of Columbia courts against our will and against an agreement we had to settle the matter that Thanh Van Vo, the party who sued us in the Superior Court of the District of Columbia in 1986, not to sue over the matters he sued about. Once we filed to defend ourselves and also counter-claimed against Thanh Van Vo and third-party claimed against those who cooperated with him in damaging us, the defendant courts of the District of Columbia and the defendant judges and officials abandoned that obligation completely and now the District Court below and the Court of Appeals, have followed suit. We do not protest any "exercise" of jurisdiction but rather the abandonment of undertaking any such exercise. We do not attack the actions of the defendants below in having "some" jurisdiction but rather their abandonment of their jurisdiction with regard to us altogether. That this obligation to decide cases exists is made clear in the very case that the panel in the Court of Appeals cited, *Wilton v. Seven Falls Co.*, 515 U.S. 277, at 285 (1995) That case is not in conflict with the position that we seek in regard to the principal thrust of our complaint and in fact supports our position as regards our main complaint, which is of, effectively, our being completely denied meaningful and adequate access to the courts of the District of Columbia. It is another

case that shows that the Court of Appeals decisions are in conflict with the decisions of this Court.

Perhaps an even more important reason for this Court to grant our petition is the unresolved question of whether the complete refusal of the respondents to act, once we were embroiled in the District of Columbia court system against our wishes, to resolve our defenses or our claims is an "act or omission" in their judicial capacity. Is a complete refusal to act "within" the "judicial capacity" of a judge or other court official? Or is it the case that such a complete refusal act is, because it is not what a judge is obliged to do according to cases of this court such as we have just cited, the case that it is an abandonment of required judicial capacity and not an act or omission within that capacity at all? If the latter is the case then neither common law judicial immunity or that judicial immunity placed into 42 U.S.C. § 1983 in the 1996 amendments should be a barrier that the respondents here should be allowed to hide behind and our petition should be granted to bring home this important principle in a case of first impression. If the respondents, because of their absolute refusal to act, cannot claim to have acted or omitted to act in their "judicial capacity" that there is an important issue of first impression here as to whether they are immune from monetary damages and having to pay the costs and expenses, including counsel fees and expert fees of suits against them under classic civil rights laws.

Further, since the respondents absolutely for years have refused to let us advance our defenses and claims in the District of Columbia municipal court system and since they clearly intend to continue that posture unless compelled to change it, there is no declaratory relief available to us. That brings us clearly within an exception that is in 42 U.S.C. § 1983 in its present form and the Court of Appeals paid no attention to our rights in that regard under that statute. This Court needs to make clear that this relatively new aspect of the Ku Klux Klan Act cannot be thus ignored but must be looked into. It is another important aspect of first impression in our case.

Further, the one element of declaratory relief, albeit a partial one, was when a judge of the Superior Court twice declared that we should take our federal claims over to the federal courts, splitting them out from our non-federal claims and then, after we had finished in the federal courts, returning to the Superior Court to "try what was left." This was taken official note of in the federal courts by Judge Harry Edwards in the Court of Appeals in his reported opinion at See *Hoai v. Sun Refining and Marketing Company, Inc.*, 866 F.2d 1515, 1519-20 (D.C.Cir.1989). Yet this, our only declaratory relief, albeit partial, was directly violated when, after we had finished in the federal courts, where we won one and lost one, and returned to the Superior Court the judge there, the respondent Dixon, the same one who

bid us "go away," while not taking any action on our claims or defenses, let Sun, represented by a good friend of his, out of the case so that we could not pursue our non-federal claims against Sun and did so before the time for us to respond to that effort had even passed. Moreover, he helped his friend out specifically on the basis that we had not brought our non-federal claims against Sun in the federal court, when one of his fellow Superior Court judges was the one who bid us split our claims between federal and non-federal claims and try the federal claims alone in the federal courts. This was not only a deprivation of the partial declaratory relief that we had been granted, it was a sandbagging in violation of our rights of due process. As such it is important that this specific violation under one of the exceptions to judicial immunity in 42 U.S.C. § 1983 be addressed, which the Court of Appeals refused to do. There is not much law that has been reported under this important exception, certainly not in this Court. It would be important for this Court to take up this case and make clear that this exception in the statute must be observed.

The Court of Appeals here is often considered as unusually important and, therefore, it would seem particularly important that it not be allowed to ignore the law as written and contradict the opinions of this Court as we have pointed out here that it has done. Nowhere in that case is this need more apparent than with regard to the Court of Appeals' erroneous holding in its opinion which it based upon

this Court's 1952 opinion in *Blackmar v. Guerre*, 342 U.S. 512 (1952). In the 1970 amendments to the Ku Klux Klan Act Congress specifically overrode that decision by the clear language it added to the Act. The Court of Appeals here didn't just ignore the error by the District Court on this point, it emphatically repeated it, ignoring the law and our rights to change the name of the defendants at the same time had the courts below even been correct on this point, which they weren't. And, while perhaps not of equal importance in the eyes of this Court, the mistake addressed in Question Presented Number 14 is equally indicative of the inattention and ignoring of our rights by the Court of Appeals and ought to be considered as well.

To paraphrase, "Justice denied is justice completely denied" and this ought to be addressed as an issue of first impression under the circumstances of this case that ought to be addressed by the Highest Court.

Finally, tied in with this denial of access to the courts and, therefore, to justice, is the racially discriminatory nature of the denial of access to the courts here. When Hoai, and the other two of us who were assisting him to recover the possession of his Sunoco gas station franchise, were hauled into court by the ringleader of the would-be Vietnamese mafia that was extorting him of the franchise in violation of the settlement agreement that had been reached, the initial TRO judge abandoned her neutrality and

judicial role and leapt into the role of prosecutor, granting the ringleader, Vo, a TRO based on a charged tort that he had not either pled nor thought of. Then Sun changed sides and went from urging Hoai to regain control of his station to siding with the ethnic mafia and its head thug, treating him as the legitimate franchisee, which we were able to rectify in federal court but with a severe limitation on damages. Yet when we defended and counter and third-party claimed we found that we would not be given any meaningful opportunity to be heard. Is this not to compound injustice with the injustice of a complete denial of justice? Every ethnic group in this country, including the Italians themselves, has been plagued with this Mafia problem. Is not the refusal to allow access to the courts in a meaningful away to those wrongfully sued by such bad actors a racially discriminatory attitude and pattern of behavior? Is it not to say that in the face of such activity, because of this problem as a problem within their ethnic community we will not give them access to our courts to redress their genuine grievances, even while we allow the members of these ethnic bad groups to use our courts to assist them in their wrongdoing? This too is a matter of first impression that needs to be addressed.

Respectfully submitted,

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